

ALTS - June 1, 1998 - OSS NPRM, CC Docket No. 98-56

ALTS believes that there may be significant advantages for all parties if a uniform evaluation process and statistical model is adopted eventually, the Commission should not delay its adoption of model performance measurements in order to build a uniform statistical process.

The Commission notes that a possible use of statistical analysis in evaluating an incumbent local exchange carrier's performance in meeting the statutory requirements would be "to set a threshold standard for judging whether an incumbent local exchange carrier's performance warrants further regulatory scrutiny, (i.e., to establish a "safe harbor" (§ 121))." As the Commission infers, such a safe harbor would conserve regulatory resources and allow enforcement resources to be used against those carriers not meeting the threshold standard.

While ALTS supports the use of safe harbors in certain specific situations, such as the short time-frames of a section 271 proceeding, ALTS does not believe that it would be wise to set any absolute safe harbor, at least not initially. A natural consequence of such a parameter would be performance results just within the safe harbor. There would be little or no incentive for the incumbents to improve performance that fell within the safe harbor. While the goal of preserving regulatory resources is one on which all parties can agree, it makes more sense to

ALTS - June 1, 1998 - OSS NPRM, CC Docket No. 98-56

acknowledge that regulatory agencies will use discretion in deciding when and whether to inquire further into ILEC performance. After time and experience with the performance measures it might make more sense to adopt an absolute safe harbor, but not now.

The Commission also seeks comment on whether the incumbent local exchange carrier should perform any statistical analysis. ALTS has no objection to the incumbent LECs performing an initial analysis as long as the results are auditable and the underlying data upon which the analysis is based is available to regulators and interested parties on a timely and nondiscriminatory basis.

The Commission notes that there are a number of OSS functions and related activities that have a retail analog that allows a direct comparison between the performance an incumbent local exchange carrier provides to itself and the performance it provides to competing carriers, among them the OSS functions associated with pre-ordering, ordering, and provisioning of resold services, and repair and maintenance for both resold services and unbundled network elements. However, a number of activities, like the provisioning of UNEs, have no obvious retail analog, and the Commission asks what methods of evaluation should apply to each of these situations.

ALTS - June 1, 1998 - OSS NPRM, CC Docket No. 98-56

Previously, the Commission has stated that with respect to activities for which there is no analogue, the Commission will examine whether the activity is performed in a manner so as to allow the competitive carrier to compete in an effective manner (Local Competition Order at ¶ 315). While on a theoretical level this test of whether a new carrier is able to compete effectively may appear equitable, ALTS is hopeful that as the Commission gains experience in this area it will be able to establish more concrete parameters for those activities for which there is no analog. This, again, is a reason why the Commission must act expeditiously in adopting the model performance measures.

Finally, Appendix B seeks comment on whether analyses other than a comparison of averages may be useful or necessary. ALTS has always supported analyses other than a simple comparison of averages. The illustration that the Commission itself included in Appendix B is an excellent example of a limitation of a simple comparison of averages. ALTS believes that additional analysis is important, and notes that additional analyses may require additional performance measures. Nonetheless, ALTS still believes the most important thing the Commission can do at the present time is expeditiously adopt the proposed measurements and work on their refinement as experience dictates.

VII. OTHER ISSUES (§§ 124-131)

A. Performance Standards (§ 125)
and Enforcement Mechanisms (§§ 130)

The Commission needs to establish the rights of new entrants to include enforcement provisions in their interconnection agreements that employ any quantitative model adopted by a state or any other model that reasonably serves the needs of the carriers. In her Separate Statement on the OSS NPRM, Commissioner Ness noted that "[c]arriers, in the first instance, and state commissions, in arbitrations or rulemakings, are free to establish minimum tolerance levels of performance as they see fit."

However, experience shows that it is very difficult for competitive carriers to negotiate ordinary commercial enforcement mechanisms in their interconnection agreements. Almost two years ago in a petition for reconsideration of the Local Competition Order, ALTS asked the Commission to rule that it is a violation of the statutory duty to negotiate in good faith for an incumbent to refuse to be subject to reasonable commercial enforcement mechanisms (ALTS Petition for Reconsideration filed September 30, 1996, at 23-29).⁴ If the Commission is unwilling to establish

⁴ See also ALTS' comments filed May 16, 1996, at 9, 27: "There is nothing novel about the notion that a commercial agreement should contain enforcement mechanisms which can make
(continued...)"

that principle by rule, it ought, at the very least, in this proceeding find that new entrants have the right to include enforcement provisions (including incident-based self-executing remedies) in their interconnection agreements that employ any quantitative models and enforcement procedures established by any regulatory body, and also the right to negotiate any other models or procedures that will satisfy the needs of the carriers.

A prominent example of the kind of linkage needed between performance measurements and remedies is the agreement between Cablevision Lightpath and Bell Atlantic in New York. Cablevision Lightpath negotiated an interconnection agreement containing sets of CLEC-specific, incident-based performance measurements that help ensure the timely and accurate provisioning of interconnection services essential to facilities-based CLECs through meaningful self-executing penalties for non-performance.⁵ The New York PSC recently emphasized that this linkage of measurements and effective remedies are an essential element in any RBOCs' compliance with the requirements for in-region long

⁴(...continued)
judicial enforcement less likely."

⁵ See the portion of the Cablevision Lightpath agreement appended to these comments (Attachment A). It is also significant that the Connecticut DPUC recently adopted a similar set of incident-based performance standards proposed by Cablevision Lightpath (Docket No. 97-04-23; Attachment B).

distance entry under Section 271: "Such standards and remedies will continue to be offered by Bell Atlantic-NY in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions."⁶

B. Technical Issues (§§ 126-129)

ALTS takes no position currently on the OSS NPRM's conclusion that "it is not necessary at this time for us to address the issue of uniform technical standards for OSS interfaces" (§ 126). Certainly, from ALTS' viewpoint the most desirable outcome would be the creation of robust performance measurements and standards that would motivate the incumbents to quickly implement effective OSS solutions, and thereby spare the Commission from any need to address particular standards. In the absence of such measurements and standards, as the OSS NPRM appears to recognize, issues about whether the incumbents are implementing standards in a timely fashion will likely arise (§ 129), as will the issue of whether the incumbent can force new

⁶ In the Matter of Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. 97-C-0271 (issued April 6, 1998)

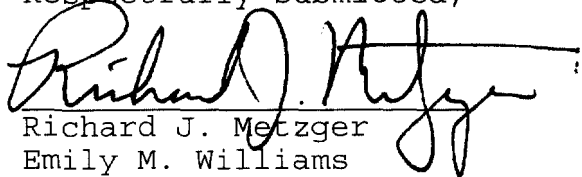
ALTS - June 1, 1998 - OSS NPRM, CC Docket No. 98-56

entrants off existing implemented standards (see the remarks of Mr. William Stacy at the BellSouth-FCC OSS meeting held May 13, 1998). While specification of technical standards is clearly not a preferred regulatory remedy, the Commission needs to reserve the authority to act and act quickly in the event that standards implementation problems do emerge.

CONCLUSION

For the foregoing reasons, the Commission should promptly adopt the proposed Model Rules with the modifications proposed by ALTS.

Respectfully submitted,



Richard J. Metzger
Emily M. Williams
Association for Local
Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20036
(202) 969-2583

June 1, 1998

ATTACHMENT A

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Dated as of August 1, 1997

by and between

NEW YORK TELEPHONE COMPANY

and

CABLEVISION LIGHTPATH, INC.

FOR NEW YORK

ATTACHMENT F

INCIDENT-BASED LIQUIDATED DAMAGES

Specified Activity	Performance Interval	Breach Amount	Specified Performance Breach
Ia Trunk ^U Provisioning Intervals	1. <u>Initial Trunks</u> : Within sixty (60) business days of receipt of a valid ASR.	\$240 per breach per T-1/DS-1	NYNEX shall be deemed in breach for each day beyond 48 hours after the due date.
	2. <u>Additional Trunks</u> : Within thirty (30) business days of receipt of a valid ASR.	\$240 per breach per T-1/DS-1	NYNEX shall be deemed in breach for each day beyond 48 hours after the due date.
Ib Trunk Service Restoration	1. <u>Service-Affecting</u> - Service-Affecting trunk service trouble will be restored within two (2) hours of trouble notification. Service-Affecting trouble is defined as a condition or event where there is call blockage or overflow to a final trunk.	\$15 per trunk per breach	NYNEX shall be deemed in breach every four (4) hour period or increment thereof, after the first hour that service has failed to be restored.
	2. <u>Non-Service-Affecting</u> - Non-Service-Affecting trouble will be restored within 24 hours of notification. Non-Service-Affecting trouble is defined as a condition or event where a trunk is out of service, but no call blockage or overflow is occurring. If trouble becomes service-affecting, breach is immediate.	\$15 per trunk per breach	NYNEX shall be deemed in breach every twenty-four (24) hour period or increment thereof, after the first twenty-four (24) hour period that service has failed to be restored.
	3. <u>SS7 Links</u> - Single A links will be restored within two (2) hours of notification including links to CLI's third-party SS7 provider.	\$15 per trunk per breach	NYNEX shall be deemed in breach for every four (4) hour period or increment thereof, after the first hour that the service has failed to be restored.

^U These trunks include those used for interconnection, operator services, and E911/911.

Specified Activity	Performance Interval	Breach Amount	Specified Performance Breach
II Interim Number Portability (INP):	1. Remote Call Forwarding (RCF) <u>Translation</u> Intervals are in compliance with Attachment E.	\$5 per line per order plus \$157 for dispatch	NYNEX shall be deemed in breach for each missed appointment.
	2. Direct Inward Dialing (DID) <u>Installation:</u> Within twenty-one (21) business days of receipt of a valid ASR.	\$15 per trunk per breach	NYNEX shall be deemed in breach for each day beyond the scheduled date within the interval.
	3. Route Indexing (RI) (Upon mutual agreement to use RI.)	\$240 per breach per T-1/DS-1	NYNEX shall be deemed in breach for each day beyond the scheduled date within the interval.
	a. <u>Initial Trunks:</u> Within twenty-one (21) business days of receipt of a valid ASR.	\$240 per breach per T-1/DS-1	NYNEX shall be deemed in breach for each day beyond the scheduled date within the interval.
	b. <u>Additional Trunks:</u> Within sixteen (16) business days of receipt of a valid ASR.	\$240 per breach per T-1/DS-1	NYNEX shall be deemed in breach for each day beyond the scheduled date within the interval.
III. Order Processing	c. <u>Translation</u> Intervals are in compliance with Attachment E.	\$5 per line, per order plus \$157 for dispatch	NYNEX shall be deemed in breach for each missed appointment.
	Firm Order Confirmation ("FOC") or Service Order Confirmation (SOC) for all services as per Attachment E".	20% of non-recurring charges (NRC)	NYNEX shall be deemed in breach for each missed interval for each FOC or SOC not sent by NYNEX.

Specified Activity	Performance Interval	Breach Amount	Specified Performance Breach
IV. Unbundled Network Elements	Missed due date as listed on the Firm Order Confirmation (FOC). Due dates must comply with Attachment E unless otherwise agreed to by the parties.	25% of NRC for first miss 35% of NRC for second miss 40% of NRC for third miss	NYNEX shall be deemed in breach for each day beyond the due date.
V. UNE Service Restoration	1. Out of Service Trouble will be restored within twenty-four (24) hours of notification. Service-affecting trouble is defined where the end user has no dial tone, can not call out or can not be called.	1/30 th of recurring charge	NYNEX shall credit for an outage for every twenty-four (24) hour period after the first twenty-four (24) hours that service has failed to be restored.
VI. Resale Provisioning	1. Missed due date as listed on the Service Order Confirmation (SOC). Due date must comply with 915 Tariff unless otherwise agreed to by the Parties.	25% of NRC for first miss* 35% of NRC for second miss* 40% of NRC for third miss*	NYNEX shall credit for the first missed appointment.
VII. Resale Service Restoration	1. Out of Service Trouble will be restored within twenty-four (24) hours of notification. Service-affecting trouble is defined where the end user has no dial tone, can not call out or can not be called.	1/30 th of recurring charge*	NYNEX shall credit for an outage for every twenty-four (24) hour period after the first twenty-four (24) hours that service has failed to be restored.

* Breach amounts are per Tariff 900 Sections A.7.3 and D.2.

STATE OF CONNECTICUT

ATTACHMENT B

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 97-04-23 APPLICATION OF THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY FOR APPROVAL OF
PROPOSED SERVICE STANDARDS AND FINANCIAL
REMEDIES FOR RESOLD SERVICES AND UNBUNDLED
ELEMENTS

April 30, 1998

By the following Commissioners:

Jack R. Goldberg
Linda Kelly Arnold
Donald W. Downes

DRAFT DECISION

This draft decision is being distributed to the parties in this proceeding for comment. The proposed decision is not a final decision of the Department. The Department will consider the parties' arguments and exceptions before reaching a final decision. The final decision may differ from the proposed decision. Therefore, the draft decision does not establish any precedent and does not necessarily represent the Department's final conclusions.

of the Department to take the necessary actions to ensure the public's interest in quality service is protected. Accordingly, the Department cannot adopt the LCUG proposal for use by the Telco in this proceeding.

2. Telco Proposal

The Telco proposed that the Department adopt a limited set of 19 performance measurements and associated achievement standards for use with its wholesale telecommunications service offerings. In the opinion of the Telco these measurements encompass the entire provisioning and support processes that are of concern to the CLECs and offer the Department sufficient means to evaluate the Telco's performance. The other parties to the proceeding generally disagree with the Telco's representations of its proposed tests and measurements suggesting stronger action is needed by the Department to protect their respective interests in a competitive market.

In reviewing the Telco's proposal, the Department concludes that the scope of measurements proposed by the Telco adequately measure the efficiency and effectiveness of the wholesale provisioning process. However, under the requirements set forth in §251 and §252 of the Telcom Act the Department must further ensure that the provisioning process is nondiscriminatory. As presented, the Telco's proposal does not sufficiently provide such assurances to either the Telco's wholesale subscribers nor to the Department. As was the case when it reviewed the LCUG proposal, the Department has reservations about the Telco proposal which makes it unsuitable as presented for wholesale adoption in this proceeding. Accordingly, the Department will exercise its authority under Conn. Gen. Stat. §16-247 to modify the Telco proposal in such a manner that it will provide greater value to the general public, CLECs and the Department.

The Department is of the opinion that with some modification in tests, standards and methodology the Telco's proposal can be greatly improved and considered adoptable. It is evident from reviewing the comments submitted in this proceeding that the proposed set of measurements do not provide the breadth of coverage considered desirable by some parties. According to one party the limited set of measurements address only resold service and unbundled network elements and neglect critical interconnection services needed by facilities-based CLECs. The Department considers this criticism extremely valid with recent announcements by some prospective competitors to limit their participation in the Connecticut market to facilities-based competition. The lack of discrete performance measurements for such critical facilities is a weakness that cannot be dismissed by the Department.

↓
The Department is of the opinion that the measurement set proposed in this proceeding by the Telco covers essential aspects of the wholesale provisioning process for a large number of CLEC providers and satisfies the basic need for threshold performance guarantees from the Telco for those providers. However, the Department is of the opinion that additional performance measurements must be introduced to the proposed plan to ensure against any unwarranted bias toward provisioning resale services and unbundled network elements by the Telco. Accordingly, the Department

Docket No. 97-04-23

Page 33

will incorporate five additional measurements proposed by Cablevision Lightpath Inc. in its letter of March 25, 1998 as modified herein. Specifically, the Telco will report on a monthly basis for each CLEC the:

- number of interconnection trunks (of any kind, including SS-7, E911, operator services, and directory assistance trunks) provisioned more than two days after the assigned due date (the applicable interval to be set by agreement of the parties);
- number of interconnection trunks with service-affecting trouble that are not restored to service within eight hours of notification (or within 24 hours, for non-service affecting trouble);
- number of unbundled loops, special access trunks, and extended links provisioned after the assigned due date (the applicable interval to be set by agreement of the parties);
- number of unbundled loops, special access trunks, and extended links with service affecting trouble that are not restored to service within 24 hours of notification; and
- number of ported numbers for which the completion time (from disconnection to remote call forward translation), and thus service outage, is greater than four hours.

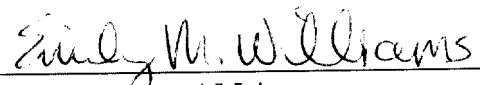
Cablevision Lightpath further proposed financial remedies for Telco nonperformance in each of the five areas. Lightpath predicates its proposed remedies on recovering the cost it incurs to restore confidence on the part of customers with its service. Lightpath argues that its proposal is not designed to be punitive. The Department has thoroughly reviewed the compensation principal asserted here by Lightpath and is of the opinion that the Department does not have sufficient authority to directly award compensation to a CLEC for a performance failure by the Telco without conducting a thorough investigation of such claims. Under the proposal put forward by Lightpath the Department would, in effect, dispense with due process and move directly to a summary judgment against the Telco. This would constitute an unprecedented act on the part of the Department.

By including the five measurements in the scope of the reporting requirements for the Telco the Department will provide CLECs the information needed to substantiate a claim before this Department and a request for action. Furthermore, the information provided by this Decision will serve to substantiate any claim of nonperformance under interconnection agreements between the respective parties. The Department sees the issue of compensation to be a matter of contractual obligation between the parties and not a subject of this Department's purview. Accordingly, the Telco will be ordered to file with the Department the above referenced information monthly for each CLEC, including SAI, ordering such services in the subject calendar month in accordance with the format prescribed by this Decision no later than 20 working days following the close of the subject month.

Separately, the Telco reaffirmed by letter dated March 25, 1998, its intent to revise its proposal to 1) add a measurement for "Actual Service Order Completion

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 1998, copies of the foregoing Comments of the Association for Local Telecommunications Services were served by hand to the parties listed below.


Emily M. Williams

Magalie Roman Salas
Secretary
Federal Communications Comm'n
1919 M Street, N.W.
Washington, D.C. 200554
(original and four copies)

Richard Metzger
Chief, Common Carrier Bureau
Federal Communications Comm'n
1919 M Street, N.W.
Washington, D.C. 20554

Janice Myles
Roomm 544
Federal Communications Comm'n
1919 M Street, N.W.
Washington, D.C. 20554
(paper copy and diskette)

ITS
1231 20th Street, NW.
Washington, D.C. 20036